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**COPY MAILED**

**AUG 29 2008**

**OFFICE OF PETITIONS**

In re Application of :  
Ryan Riley : DECISION ON PETITION  
Application No. 10/763,808 :  
Filed: January 22, 2004 :  
Attorney Docket No. 035813-004:

This is a decision on the "Petition Under 37 C.F.R. 1.181(a) to Withdraw Holding of Abandonment Based on Failure to Receive Office Action" filed February 19, 2008. In the alternative, applicant files a PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b).

The petition under 1.181(a) is DISMISSED.

The petition under 1.137(b) is GRANTED.

The above-identified application became abandoned for failure to file a reply to the non-final Office action mailed December 4, 2006. This Office action set a shortened statutory period for reply of three (3) months, with extensions of time obtainable under § 1.136(a). No reply was received and no extension of time was obtained. The application became abandoned on March 5, 2007. A courtesy Notice of Abandonment was mailed on February 1, 2008.

In response, applicants filed the instant petition, asserting that applicants never received the Office action. (It is acknowledged that a status letter was previously filed by attorney Krebs on October 1, 2007).

**PETITION UNDER 1.181(a)**

A review of the application file reveals no irregularities in the mailing of the Office action on December 4, 2006. Thus, there is a strong presumption that the correspondence was properly mailed to the applicant at the correspondence address of record. In the absence of demonstrated irregularities in mailing of this Notice, petitioner must submit evidence to overcome this presumption. The following showing is required:

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

Petitioner has not adequately supported his claim of non-receipt with such evidence. With respect to the practitioner, petitioner provides a copy of their mail log and a printout from their docketing system showing all activity entered into this system for this application. However, petitioner states that "applicants searched their file and the file jacket." Petitioner clearly does not state that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. This omission in the statement suggests that the applicants' file or file jacket would be

distinct from that of the practitioner's file or file jacket. It is also noted that no statement is presented from attorney Krebs, the practitioner to whom the Office action was addressed and who is referred to in the petition. Having considered the evidence submitted, it is not found adequate to meet the required showing of nonreceipt.

**PETITION UNDER 37 CFR 1.137(b)**

Petitioner has met the requirements for revival under 37 CFR 1.137(b). The petition includes the required reply in the form of an amendment, the required statement of unintentional delay and payment of the petition fee set forth in 37 CFR § 1.17(m). No terminal disclaimer is required.

Technology Center AU 2192 has been advised of this decision. The application is, thereby, forwarded to the examiner for consideration of the amendment submitted on petition filed February 19, 2008.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a stylized, cursive script.

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions